IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

| VINCENT BREHM, |) | |
|--------------------------------------|---------|---|
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| | 8:10CV6 | 4 |
| DANA TROWBRIDGE, Mayor of the |) | |
| City of David City, individually and |) ORDER | ? |
| his official capacity, and THE CITY |) | |
| OF DAVID CITY, |) | |
| |) | |
| Defendants. |) | |
| |) | |

This matter is assigned to the magistrate judge for full pretrial supervision pursuant to 28 U.S.C. § 636. On July 1, 2010, the Clerk of the Court advised the undersigned that the plaintiff had filed an amended complaint without obtaining leave of the court to do so.

Effective December 1, 2009, Rule 15 of the Federal Rules of Civil Procedure was amended to provide that a party may amend a pleading once as a matter of course within (A) 21 days of serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a)(1).

The record shows that plaintiff's original complaint was filed on February 15, 2010. The defendants answered on April 19, 2010 (Doc. 8), and filed a Motion for Summary Judgment (Doc. 19) on June 30, 2010 in accordance with paragraph 7 of the Initial Progression Order (Doc. 10). Plaintiff filed a "First Amended Complaint" (Doc. 22) later on June 30.¹

¹The deadline for filing motions for leave to amend the pleadings expired on July 1, 2010. Except for a revision in the second sentence of paragraph 10, the "First Amended Complaint" is identical to the original Complaint. It does not appear that the document was intended as a response to the pending Motion for Summary Judgment.

At this stage of the proceeding, the plaintiff was not entitled to amend his pleading "as a matter of course." To clarify the record and avoid future problems concerning the validity of the pleadings, the court finds that the "First Amended Complaint" should be stricken for failure to comply with Fed. R. Civ. P. 15(a) and NECivR 15.1.

IT IS ORDERED that the "First Amended Complaint" (Doc. 22) is stricken from the record.

A party may object to this order by filing an "Objection to Magistrate Judge's Order" within 14 days after being served with the order. The objecting party must comply with all requirements of NECivR 72.2.

DATED July 7, 2010.

BY THE COURT:

s/ F.A. Gossett United States Magistrate Judge